

## **Senate Bill No. 1386**

### **CHAPTER 429**

An act to amend Section 1798.16 of the Civil Code, to add Section 18030.5 to the Education Code, and to add Sections 6254.20, 6254.21, and 11015.5 to the Government Code, relating to state computer technology.

[Approved by Governor September 11, 1998. Filed  
with Secretary of State September 11, 1998.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**SB 1386, Leslie. State computer technology: information gathering.**

(1) Existing law includes comprehensive provisions that govern information technology in state government, including provisions that establish the Department of Information Technology, prescribe the duties of that department, and prescribe the responsibilities of state agencies in the area of information technology.

This bill would require every state agency that utilizes any method, device, identifier, or other data base application on the Internet to electronically collect personal information about any user, to prominently display specified information at at least one anticipated initial point of communication with a potential user, as specified, including notice to the user that he or she has the option of having his or her personal information discarded without reuse or distribution.

The bill would also prohibit a state agency from distributing or selling any electronically collected personal information about users, without the user's permission, to any 3rd party, except as specified.

(2) The California Public Records Act sets forth specified procedures for the disclosure of certain types of information by state and local agencies.

This bill would prohibit any state or local agency from posting the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(3) Under existing law, the State Librarian administers the foundation program whereby state funds are made available to public libraries for the purpose of providing services to the public.

This bill would impose a state-mandated local program by requiring every public library that receives state funds pursuant to the foundation program and that provides public access to the Internet to adopt a policy by January 1, 2000, regarding access to the

Internet by minors and to make the policy available to members of the public.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1798.16 of the Civil Code is amended to read:

1798.16. (a) Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

(b) Whenever an agency electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.

(c) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.

SEC. 2. Section 18030.5 is added to the Education Code, to read:

18030.5. (a) Every public library that receives state funds pursuant to this chapter and that provides public access to the Internet shall, by a majority vote of the governing board, adopt a policy regarding access by minors to the Internet by January 1, 2000.

(b) Every public library that is required to adopt a policy pursuant to subdivision (a) shall make the policy available to members of the public at every library branch.

SEC. 3. Section 6254.20 is added to the Government Code, to read:

6254.20. Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

SEC. 4. Section 6254.21 is added to the Government Code, to read:

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) For purposes of this section “elected or appointed official” includes, but is not limited to, all of the following:

- (1) State constitutional officers.
- (2) Members of the Legislature.
- (3) Judges and court commissioners.
- (4) District attorneys.
- (5) Public defenders.
- (6) Members of a city council.
- (7) Members of a board of supervisors.
- (8) Appointees of the Governor.
- (9) Appointees of the Legislature.
- (10) Mayors.
- (11) City attorneys.
- (12) Police chiefs and sheriffs.

SEC. 5. Section 11015.5 is added to the Government Code, to read:

11015.5. (a) Every state agency, including the California State University, that utilizes any method, device, identifier, or other data base application on the Internet to electronically collect personal information, as defined in subdivision (d), regarding any user shall prominently display the following at at least one anticipated initial point of communication with a potential user, to be determined by each agency, and in instances when the specified information would be collected:

(1) Notice to the user of the usage or existence of the information gathering method, device, identifier, or other data base application.

(2) Notice to the user of the type of personal information that is being collected and the purpose for which the collected information will be used.

(3) Notice to the user of the length of time that the information gathering device, identifier, or other data base application will exist in the user’s hard drive, if applicable.



(4) Notice to the user that he or she has the option of having his or her personal information discarded without reuse or distribution, provided that the appropriate agency official or employee is contacted after notice is given to the user.

(5) Notice to the user that any information acquired by the state agency, including the California State University, is subject to the limitations set forth in the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(6) Notice to the user that state agencies shall not distribute or sell any electronically collected personal information, as defined in subdivision (d), about users to any third party without the permission of the user.

(7) Notice to the user that electronically collected personal information, as defined in subdivision (d), is exempt from requests made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(8) The title, business address, telephone number, and electronic mail address, if applicable, of the agency official who is responsible for records requests, as specified by subdivision (b) of Section 1798.17 of the Civil Code, or the agency employee designated pursuant to Section 1798.22 of that code, as determined by the agency, who is responsible for ensuring that the agency complies with requests made pursuant to this section.

(b) A state agency shall not distribute or sell any electronically collected personal information about users to any third party without prior written permission from the user, except as required to investigate possible violations of Section 502 of the Penal Code or as authorized under the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code). Nothing in this subdivision shall be construed to prohibit a state agency from distributing electronically collected personal information to another state agency or to a public law enforcement organization in any case where the security of a network operated by a state agency and exposed directly to the Internet has been, or is suspected of having been, breached.

(c) A state agency shall discard without reuse or distribution any electronically collected personal information, as defined in subdivision (d), upon request by the user.

(d) For purposes of this section:

(1) “Electronically collected personal information” means any information that is maintained by an agency that identifies or describes an individual user, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, password, electronic mail address, and information that reveals any network location or identity, but



excludes any information manually submitted to a state agency by a user, whether electronically or in written form, and information on or relating to individuals who are users serving in a business capacity, including, but not limited to, business owners, officers, or principals of that business.

(2) “User” means an individual who communicates with a state agency or with an agency employee or official electronically.

(e) Nothing in this section shall be construed to permit an agency to act in a manner inconsistent with the standards and limitations adopted pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) or the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

